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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/631,786 | 08/01/2003 | JungMan Yoon | 1254-0232P | 1678 |

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EXAMINER

WARE, DEBORAH K

ART UNIT PAPER NUMBER

1651

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/631,786 | Applicant(s) YOON, JUNGMAN | |
| | Examiner Deborah K. Ware | Art Unit 1651 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-4 are presented for examination on the merits.

The Preliminary amendment filed August 1, 2003, has been received and entered. However, Applicant is requested to update the status of the parent case 10/005,122 which is now US Patent 6,645,533 and such update should be added to the amendment such that page 1, line 1 of the specification reflects the status.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statements (IDSs) submitted on December 15 2003 and August 1, 2003 have been received. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-4 are rendered vague and indefinite for not clearly setting forth how the method is carried out with respect to the step of administering. It is unclear how the

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mixture is being given to the patient? Is it done by injection or orally? The metes and bounds of the claims can not be determined. It is suggested to insert –orally—before “administering” at line 2 of claim 1. Furthermore, it is unclear what the active ingredient is per se. How can ion-exchange capacity be an active ingredient? The phraseology in the claim 1 is very confusing. The phrase “as an active ingredient” would be better placed after “mixture of herbs” or better yet still perhaps to delete the phrase entirely.

Furthermore, claim 4 is rendered vague and indefinite because “the adenosine triphosphate synthesis activator” recited at lines 1-2 lacks antecedent basis. What is the activator per se? Is it the herbs? This is not clear in the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Giampapa, cited on enclosed copy of PTO-1449 Form, as US Patent No. 5,895,652.

Claims are drawn to a method for activating adenosine triphosphate (ATP) synthesis comprising the step of administering to a patient an effective amount of herbs selected from grape seeds.

Giampapa teaches a method for comprising the step of administering to a patient an effective amount of herbs selected from grape seeds. See column 10, lines 56-57.

The claims appear to be identical to the cited disclosure and are considered to be anticipated by the teachings therein. The step required of the method is clearly disclosed as is the active ingredient. Further, the synthesis of ATP is inherent to the step disclosed by Giampapa in that when a patient is given the herb ATP would inherently be synthesized because Giampapa teaches that grape seed extract functions to maximize the body's inherent biochemical pathways, see column 4, lines 35-45.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giampapa, cited and discussed above.

The claims are further drawn to an redox potential of -300mV or less and an effective dosage amount of 5.5 mg to 17.5 mg per kg body weight of the patient.

Giampapa, in addition teaches that an amount of 20 mg per body weight of the grape seed extract may be given. Also oxidation-reduction potential is well known to be part of the biochemical pathways of the body. Note the above references in the Giampapa patent. Also see the abstract.

The claims differ from Giampapa in that the redox potential range of 300 mV or less and dosage ranges are not specifically disclosed.

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It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to optimize the dosages disclosed by Giampapa in accordance with the body weight of a patient to obtain successful results. Since Giampapa teaches 20 mg as an effective amount, 17.5 mg would have been expected to provide successful results. Further, the redox potential of a patient's body in response to administering the effective amounts of Giampapa would have been expected to be in accordance with the biochemical pathways of the body as disclosed by Giampapa. The claims are rendered prima facie obvious over the cited prior art.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

The remaining references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

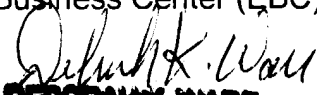
No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DEBORAH K. WARE
PATENT EXAMINER

Deborah K. Ware
September 29, 2004